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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 *In re: Hyundai and Kia Engine Litigation,*

8:17-cv-00838-JLS-JDE

Related Cases:

8:17-cv-01365-JLS-JDE

8:17-cv-02208-JLS-JDE

2:18-cv-05255-JLS-JDE

8:18-cv-00622-JLS-JDE

8:18-cv-02223-JLS-JDE

**RESPONSE TO MOTION FOR
EXTENSION OF TIME TO FILE
NOTICE OF APPEAL FILED BY
PAUL A. SAMPSON**

Hon. Josephine L. Staton
Courtroom: 10A

1 Plaintiffs submit this filing in response to the Court’s Order Requiring Response
 2 to Motion for Extension of Time. (ECF No. 215.) On June 10, 2021, the Court entered
 3 an Order and Final Judgment (“Order”) that granted final approval to a class action
 4 settlement. (ECF No. 210). Pursuant to Rules 4(a) and 26(a) of the Federal Rules of
 5 Appellate Procedure, any appeals of the Court’s order were due to be filed by July 12,
 6 2021. As the Court is aware, no timely appeals were filed. On August 9, 2021, Paul
 7 Sampson filed a Motion for Extension of Time to file an appeal to the Court’s Order.
 8 (ECF No. 214.) Mr. Sampson’s motion, however, is untimely and should be denied for
 9 three reasons.

10 *First*, Mr. Sampson failed to object to the settlement and thus lacks standing to
 11 appeal. On October 31, 2020, November 6, 2020, and November 8, 2020, Class
 12 Counsel filed declarations with the Court listing all objections received. (ECF Nos.
 13 150, 161, 166.) Mr. Sampson did not file an objection, and still has not submitted an
 14 objection consistent with the Court’s May 7, 2020 Order granting preliminary
 15 approval. (ECF No. 132, at 30 (“Class Members must mail any letter objecting to or
 16 opting out of the proposed settlement within **sixty (60 days)** after the Notice Date.”)
 17 (emphasis in original).) The Settlement Agreement states the following:

18 Any Class member who fails to file and serve timely a written objection
 19 containing all of the information listed in paragraphs 2 and 3 above,
 20 including notice of his/her intent to appear at the Final Approval
 21 Hearing, shall not be permitted to object to the Settlement and shall be
 22 foreclosed from seeking any review of the Settlement or the terms of
 the Settlement Agreement by any means, including but not limited to
 an appeal.

23 (ECF No. 194-1.) The Notice also states that if the class member “does not submit an
 24 objection in accordance with the applicable deadlines and specifications, [the class
 25 member] will waive all objections.”¹

26 Mr. Sampson admits in his motion that he learned of the proposed settlement on
 27

28 ¹ <https://www.kiaenginesettlement.com/Content/Documents/Notice.pdf> (last visited
 Sept. 21, 2021).

1 May 10, 2020. (ECF No. 214, at 2.) Mr. Sampson was also provided with notice via
 2 email on August 28, 2020, and direct notice via U.S. mail on September 17, 2020.
 3 Declaration of Katri Olson at ¶¶ 2-5. On page 2 of the notice, in a large box titled
 4 “YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT” the deadline to
 5 opt-out or object is listed as October 30, 2020.² Despite being made aware of the
 6 deadline to object, Mr. Sampson failed to do so. Because Mr. Sampson did not object
 7 to the settlement, he cannot now appeal it. *See, e.g., Churchill Village, L.L.C. v.*
 8 *General Electric*, 361 F.3d 566, 572 (9th Cir. 2004) (holding “non-named class
 9 members ... who have objected in a timely manner to approval of the settlement at the
 10 fairness hearing have the power to bring an appeal without first intervening”) (citation
 11 omitted); *Devlin v. Scardelletti*, 536 U.S. 1, 10, 122 S. Ct. 2005, 2011, 153 L. Ed. 2d
 12 27 (2002) (“It is this feature of class action litigation that requires that class members
 13 be allowed to appeal the approval of a settlement *when they have objected at the*
 14 *fairness hearing.*”) (emphasis added).

15 **Second**, setting aside the fact that Mr. Sampson failed to submit a timely
 16 objection, his proposed modifications to the settlement should be rejected on the
 17 merits. Mr. Sampson essentially contends that the settlement relief is inadequate and
 18 should offer more. The Court previously rejected this category of objection because
 19 “[i]n a class comprising several million people, it is expected that not everybody will
 20 be completely satisfied with the offered relief.” (ECF No. 202, at 25 (citing *Officers*
 21 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982) (“The proposed
 22 settlement is not to be judged against a hypothetical or speculative measure of what
 23 might have been achieved by the negotiators.”); *Hendricks v. Starkist Co.*, No. 13-cv-
 24 00729, 2016 WL 5462423, at *6 (N.D. Cal. Sept. 29, 2016) (“That a more favorable
 25 result for some Class Members could potentially have been reached is not a sufficient
 26 reason to reject an otherwise fair and reasonable settlement.”)). Moreover, Mr.

27
 28 ² <https://www.kiaenginesettlement.com/Content/Documents/Notice.pdf> (last visited
 Sept. 21, 2021).

1 Sampson fails to identify how the settlement terms fail to provide adequate relief for
 2 “Senior Citizens, Social Security Recipients, AARP Members, Disabled Veterans,
 3 disabled non-veterans, and persons qualifying within the Americans with Disability
 4 Act.” (ECF No. 214, at 2.)

5 **Third**, Mr. Sampson also failed to file a timely appeal. Appeals must be filed
 6 within 30 days after entry of judgment. Fed. R. App. P. 4(a)(1)(A). Motions for an
 7 extension of time are permitted if they (1) are filed within 30 days after the deadline to
 8 appeal; *and* (2) the party shows excusable neglect or good cause. Fed. R. App. P.
 9 4(a)(5).

10 “The good cause standard applies in situations in which there is no fault—
 11 excusable or otherwise,” and “the need for an extension is usually occasioned by
 12 something that is not within the control of the movant.” *United States v. Washington*,
 13 No. 3:15-CR-00104-SLG, 2020 WL 7643098, at *1 (D. Alaska Dec. 23, 2020)
 14 (quoting Fed. R. App. P. 4, Committee Notes on Rules—2002 Amendment). Mr.
 15 Sampson’s filing states that he “misread the time deadline for an appeal.” (ECF No.
 16 214, at 3.) His failure to timely appeal was within his control, so there is no “good
 17 cause.”

18 Next, “[t]he excusable neglect standard applies...where there is fault,” and “the
 19 need for an extension is usually occasioned by something within the control of the
 20 movant.” *United States v. Washington*, 2020 WL 7643098, at *1. In determining
 21 whether a sufficient showing of excusable neglect has been made, courts weigh the
 22 following four factors: “(1) the danger of prejudice to the non-moving party, (2) the
 23 length of delay and its potential impact on judicial proceedings, (3) the reason for the
 24 delay, including whether it was within the reasonable control of the movant, and (4)
 25 whether the moving party’s conduct was in good faith.” *Pincay v. Andrews*, 389 F.3d
 26 853, 855 (9th Cir. 2004) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*
 27 *P’ship*, 507 U.S. 380, 395 (1993)).
 28

1 Here, there would be enormous prejudice to the non-moving parties and the
2 class, and allowing an untimely appeal will have an adverse impact on judicial
3 proceedings. The Settlement was negotiated at length between counsel and via
4 mediation. Notice went out a year or more ago, and class members immediately began
5 submitting—and Defendants and Class Counsel processing or assisting—those claims.
6 The parties have put extensive effort into the settlement and its administration to date.
7 Over \$16 million in payments have already been sent to Class members, and more
8 payments are being processed. Pausing or potentially rolling back that process to
9 permit this appeal would have vast, negative consequences for the Class, including
10 delaying or denying much-needed monetary relief and vehicle repairs. Class members
11 had 60 days to submit their objections. A modest number of class members submitted
12 objections. The Court held its Fairness Hearing on November 13, 2020, and ultimately
13 overruled the objections, including those that contended the settlement could offer
14 more relief, as Mr. Sampson belatedly claims now. The proper time for considering
15 Mr. Sampson’s concerns was last fall, and he failed to act. This failure cannot now
16 derail settlement relief for millions of class members.

17 Moreover, the basis for Mr. Sampson’s extension is that he “has been working
18 on a proposed Amendment to the Final Judgment intermittently for approx. 6 weeks.”
19 (ECF No. 214, at 3.) There are no details provided regarding the “proposed
20 Amendment” other than Mr. Sampson’s statement that the “case needs at minimum an
21 addendum to protect Seniors Citizens, Social Security Recipients, AARP Members,
22 Disabled Veterans, disabled non-veterans, and persons qualifying within the
23 Americans with Disability Act.” (*Id.* at 2.) While these goals are certainly noble, Mr.
24 Sampson is essentially contending that the settlement should offer more. As set forth
25 above, similar objections received by the Court were overruled. In addition, there is no
26 explanation as to why the settlement purportedly fails to protect those persons.

27 Regarding the third factor, “the stated reason for the delay is the factor
28 considered to be the linchpin in deciding whether carelessness or neglect is

1 excusable.” *In re Pelle*, 571 B.R. 846, 853 (Bankr. C.D. Cal. 2017). A detailed
2 explanation for the mistake and delay is required to meet this standard. *See Salinas v.*
3 *IA Lodging San Diego, L.L.C.*, No. 21-CV-495 JLS (BLM), 2021 WL 1599278, at *2
4 (S.D. Cal. Apr. 23, 2021) (finding inadequate plaintiff’s “conclusory declarations
5 without a detailed description of why counsel’s [staff] made a mistake in
6 calendaring”) (quoting *Culpepper v. Merit*, No. CV 07-4377R, 2008 WL 11343360, at
7 *1 (C.D. Cal. June 30, 2008)). Here, Mr. Sampson simply states that he “misread the
8 time deadline for an Appeal as 60 days.” (ECF No. 214, at 3.) Regardless, Mr.
9 Sampson failed to timely object, or even formally object at all. Mr. Sampson’s request
10 is not 25 days late, but rather 280 days late. While Class Counsel does not believe
11 there was a justifiable reason for missing the appellate deadline by 25 days, there is
12 certainly no justifiable reason for failing to timely object, or object at all.

13 Finally, Class Counsel does not believe that Mr. Sampson filed his motion in
14 bad faith, and respectfully submits that the fourth factor is neutral. However, because
15 the first three factors weigh against Mr. Sampson’s motion for an extension, Mr.
16 Sampson’s motion should not be allowed on the basis of excusable neglect.

17 While perhaps a noble gesture, Mr. Sampson’s motion should be denied because
18 (i) he lacks standing to appeal because he did not object to the settlement; (ii) his
19 objection would have failed on the merits even if timely filed; and (iii) his failure to
20 object or timely appeal is not due to a good cause or excusable neglect.

1 Dated: September 21, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that on this 21st day of September, 2021, I caused the foregoing to be filed using the Court's CM/ECF system, and thereby electronically served it upon all registered ECF users in this case.

By: /s/ Matthew D. Schelkopf
Matthew D. Schelkopf